

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JAMES B.,

Case No. 19-CV-1593 (NEB/BRT)

Plaintiff,

v.

ORDER ACCEPTING REPORT AND
RECOMMENDATION

ANDREW SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Plaintiff James B. brought this action after the Commissioner of Social Security denied his application for disability insurance benefits and an Administrative Law Judge affirmed the denial. (ECF No. 1.) The parties filed cross-motions for summary judgment. (ECF Nos. 13, 16.) The Court has received the May 7, 2019 Report and Recommendation (“R&R”) of United States Magistrate Judge Becky R. Thorson recommending granting in part Plaintiff’s motion and denying Defendant’s motion. (ECF No. 18.)

Both parties filed responses requesting that the Court adopt the R&R. (ECF Nos. 19, 20.) Because neither party objected to the R&R, the Court reviews it only for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Finding no clear error, and based upon all the files, records, and proceedings in the above-captioned matter, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation (ECF No. 18) is ACCEPTED;

2. Plaintiff's Motion for Summary Judgment (ECF No. 13) is GRANTED IN PART;
3. Defendant's Motion for Summary Judgment (ECF No. 16) is DENIED; and
4. The matter is REMANDED to the Commissioner of Social Security for further proceedings consistent with the R&R pursuant to sentence four of 42 U.S.C. § 405(g).

a. On remand, the ALJ should further investigate whether either the State of Minnesota's Department of Employment and Economic Development Vocational Rehabilitation Services or the University of Wisconsin-Superior's Disability Support Service, under which Plaintiff received services, qualifies as an appropriate program under the relevant statutes and regulations. The ALJ should then reconsider his decision regarding Plaintiff's request for Section 301 benefits and provide his reasoning for his conclusion in his written decision. The ALJ must explain why these programs do or do not meet the qualifications for an "appropriate program."

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 3, 2020

BY THE COURT:

s/Nancy E. Brasel

Nancy E. Brasel

United States District Judge